

Docket No.: 760-3 RES

#208

DATE: July 13, 2004

RECEIVED
CENTRAL FAX CENTER

JUL 13 2004

FACSIMILE TRANSMISSION COVER SHEET

TO: Examiner Michael H. Thaler
FAX NO.: 703-872-9306
FROM: Joy I. Farber
SENDER: jfarber

OFFICIAL

HOFFMANN & BARON, LLP
ATTORNEYS AT LAW

NY OFFICE

6900 JERICHO TURNPIKE
SYOSSET, N.Y. 11791

TELEPHONE: 516-822-3550
TELECOPIER: 516-822-3582

• NJ OFFICE

1055 PARSIPPANY BOULEVARD
PARSIPPANY, N.J. 07054

TELEPHONE: 973-331-1700
TELECOPIER: 973-331-1717

NUMBER OF PAGES TO FOLLOW: 4

Please confirm safe receipt of this transmission. Thank You. Joy Farber

CONFIDENTIALITY NOTICE

The document(s) contained in this transmission is(are) confidential and/or legally privileged information of the law firm of Hoffmann & Baron, LLP. This information is intended for use by the individual or entity named on this transmission cover sheet.

If you are not the intended recipient, please be advised that any disclosure, copying, distribution or action taken in reliance on the contents of this information is strictly prohibited. If you have received this telecopy in error, please notify us immediately by telephone so that we can arrange for its return.

If there are any problems with this fax, please call the office location marked above. Thank you for your cooperation.

JUL 13 2004 3:28PM

FFMAN-BARON

NO. 7106 P. 2
RECEIVED
CENTRAL FAX CENTER

JUL 13 2004

PATENT
OFFICIAL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Scott R. Smith et al.

Examiner: Michael H. Thaler

Application No.: 09/691,782

Group Art Unit: 3731

Filed: October 19, 2000

Confirmation No.: 3708

For: IMPROVED
COVERED STENT

Docket: 760-3 RES

Dated: June 4, 2003

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Date: June 4, 2003

Signature: K.J. Goodhand *K.J. Goodhand*

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION REQUESTING WITHDRAWAL OF ABANDONMENT
UNDER 37 C.F.R. §1.181(a)

Sir:

Applicants herein petition the Commissioner to withdraw a holding of Abandonment and enter the amendment dated November 5, 2002 for the above-referenced application. This Petition Under 37 C.F.R. §1.181(a) is being submitted in accordance with MPEP §711.03(c) as a Petition to Withdraw a Holding of an Abandoned Application because the Examiner failed to enter an amendment properly filed which should have been entered.

Application No.: 09/691,782
Filing Date: October 19, 2000
Docket No.: 760-3 RES
Page 2

In an advisory action mailed December 9, 2002, the Examiner indicates that the amendment would not be entered because, "the new issues arise from the proposed amendment which, if entered, would result in a situation in which there would be no amendment relative to the patent (i.e. no difference between the patent and the application) and thus no error in the patent to provide grounds for this reissue application."

The Examiner's statement however, is not factually accurate. The Examiner contends that if claims 1-14 issued on this application, that there would be no difference, or no error from the original patent upon which the reissue is based. This is incorrect. Applicants submitted an Amendment and Response under 37 C.F.R. §1.116 on September 3, 2002 which amended original claims 5 and 7 of the application. The file history therefore reveals that the Examiner's statement in the advisory action is not accurate.

Because Applicants amended claims 5 and 7 based on the Examiner's suggestions, the patent would issue with notable differences between the original patent and the reissue patent. Applicants further elected these claims which were deemed allowable by the Examiner and reserved the right to prosecute reissue claims in a continuation application.

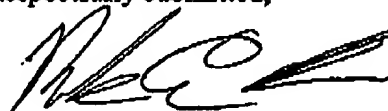
It is further established by the Code of Federal Regulations at 37 C.F.R. §1.176 and §1.177 that the practice of filing and the issuance of multiple reissue patents is accepted procedure. Applicants therefore respectfully request withdrawal of the holding of abandonment and entrance of the amendment by the Applicants.

According to MPEP §711.03(c) a Petition Under 37 C.F.R. §1.181(a) is appropriate where an application is not in fact abandoned. Withdrawal of the Holding of Abandonment is therefore requested. No fee is deemed necessary as stipulated in §711.03(c). This Petition is

Application No.: 09/691,782
Filing Date: October 19, 2000
Docket No.: 760-3 RES
Page 3

further being filed within the two-month time limit required by 37 C.F.R. §1.181(f) of two-months. Reconsideration is respectfully requested.

Respectfully submitted,



Mark E. Baron
Registration No. 46,150
Attorney for Applicant(s)

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, NY 11791
(973) 331-1700

Smith, et al.
 691,782
 L. Thaler
 Filing Date: 10/19/2000
 Art Unit: 3731
 Attorney Docket: 760-3 RES
 Confirmation No.: 3708

Trademark Office date stamp will acknowledge receipt of the following:
☐ Mo. Extension of Time
☐ IDS w/PTO 1449 & References
☐ Small Entity Statement
☐ Issue Fee
☐ Check(s)
☒ Petition Requesting Withdrawal of Abandonment
☐

Applicant: S. Smith, et al.
 Serial No.: 09/691,782
 Examiner: M.H. Thaler
 Certificate of Mailing Dated: 06/04/03
 Express Mail Label No.:
 Filing Date: 10/19/2000
 Art Unit: 3731
 Attorney Docket: 760-3 RES
 Confirmation No.: 3708

MEB/kg (0096)
 HOFFMANN & BARON, LLP

The U. S. Patent and Trademark Office date stamp will acknowledge receipt of the following:
☐ Amendment
☐ Assignment
☐ Patent Application
☐ Sheets of (In)Formal Drawings
☐ Declaration/Power of Attorney
☐ Response to Notice of Missing Parts
☐ Yr. Patent Maintenance Fee
☐ Trademark Application
☐ Drawing ☐ Specimen (x3) ☐ Letter
☐ Transmittal with Fee Authority (x2)

☐ Mo. Extension of Time
☐ IDS w/PTO 1449 & References
☐ Small Entity Statement
☐ Issue Fee
☐ Check(s)
☒ Petition Requesting Withdrawal of Abandonment
☐